



SECURITIES INDUSTRY

ALERT

THE FORMATION OF A NEW CONSUMER FINANCIAL PROTECTION AGENCY

In an effort to protect consumers of financial products and services from fraud and corruption, President Obama and the Department of Treasury released a five-part regulatory reform proposal titled “*Financial Regulatory Reform A New Foundation: Rebuilding Financial Supervision and Regulation*” (FRR Report). One of the centerpieces of the FRR Report is the creation of a Consumer Financial Protection Agency (CFPA) to protect these consumers.

If the recommendations are enacted into legislation, the CFPA will have the power to create, enforce and examine consumer protection regulations, serving as the sole authority for creating consumer financial protection statutes. The CFPA would also have the authority to regulate unfair, deceptive or abusive conduct or practices for “all credit, savings and payment products.” In particular, the FRR proposal would call for this new agency to have supervisory, examination and enforcement authority over banks and their unregulated affiliates, mortgage brokers, mortgage originators, debt collectors and debt counselors. The CFPA would also be the sole authority to interpret regulations under existing consumer financial services statutes such as the Truth in Lending Act, Home Mortgage Disclosure Act and the Equal Credit Opportunity Act.

The FRR Report suggests that the rationale for the CFPA is to create an agency free from the conflicting responsibility of maintaining the security of financial firms,

while having the resources and broad jurisdiction to impose comprehensive reform. Under the current system, bank regulatory agencies are conflicted with maintaining the security of institutions while other government regulators do not have the jurisdiction or resources to broadly impose regulations. Although the FRR Report clearly states that the CFPA would only act as a floor, not a ceiling, all covered financial firms will remain subject to stricter requirements imposed by state agencies. Additionally, while the FRR Report shifts authority from the Federal Trade Commission (FTC) and bank regulatory agencies to the CFPA, the legislation maintains that the two should be retained as “back-up” authorities. For example, the FRR Report recommends that the FTC should remain as the lead federal consumer protection agency on matters of data security and that the SEC should retain its consumer protection responsibilities. However, the FRR Report is vague as to how all of these consumer protection agencies will serve these roles and co-exist.

In sum, if the CFPA is created, it will undoubtedly have an immense impact on the financial products and services industry, requiring increased disclosure and potentially new dispute resolution procedures. Fox Rothschild LLP attorneys will continue to monitor the situation and report when appropriate.

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